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## FISCAL IMPACT REPORT

SPONSOR Papen DATE TYPED 3/10/05 HB \_\_\_\_\_

SHORT TITLE Nursing Facility Medical Malpractice SB 856

ANALYST Hanika-Ortiz

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	None				

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Aging and Long-Term Services Department (ALTSD)  
 Department of Health (DOH)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

SB856 amends the definition of "health care provider" in Section 41-5-3 NMSA 1978, a section of the Medical Malpractice Act, to include nursing homes, intermediate care facilities and post-acute health care facilities.

#### Significant Issues

DOH reports the Medical Malpractice Act makes available professional liability insurance to providers if certain qualifications are met such as having liability insurance up to \$200,000 per occurrence. When a patient files a claim against a health care provider defined in the Act, they must take their case before a Medical Review Commission prior to taking other legal action. The Medical Review Commission is comprised of representatives of licensed health care providers and members of the state bar. Except for punitive damages, the amount recoverable is not to exceed \$600,000. The value of the accrued medical and related benefits is not subject to this limitation. A health care provider's personal liability is limited to \$200,000.

## **PERFORMANCE IMPLICATIONS**

ALTSD believe SB 856 will require elderly and disabled victims of poor care in nursing homes and similar facilities to go through an administrative process before bringing suit to address their injuries.

## **FISCAL IMPLICATIONS**

The high cost of liability insurance is becoming cost prohibitive in some states and SB 856 may be one solution for these entities.

Victims of poor care in certain facilities subject to the Act will have damage caps placed on their potential recoveries.

## **TECHNICAL ISSUES**

The AGO questions whether the added wording to the definition of health care provider is necessary. The current wording includes corporations, organizations and facilities that provide health care and professional services. It would appear that nursing homes, intermediate care facilities, and post-acute health care facilities are included within the current definition, but perhaps the proposal is considered necessary to make explicit what some have argued is not clearly implicit in the current language.

DOH suggests the term “intermediate care facility”, page 1, line 23, be revised to read “intermediate nursing care facility” to distinguish it from an “intermediate care facility for the mentally retarded” (ICF/MR).

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The current law will remain unchanged.

**AHO/lg**